

**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**  
**AND**  
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**  
**Writ Appeal No.1183 of 2006**

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**Between:**

P. Manga

... Appellant

**And**

The Revenue Divisional Officer,  
Peddapuram, E.G. District and others.

... Respondents

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**::JUDGMENT::**

Counsel for the appellant:

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Shri V.V.N. Narayana Rao

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**November 03, 2006**

**Per G.S. Singhvi, CJ**

This is an appeal for setting aside order dated 27-7-2006 passed by the learned Single Judge in Writ Petition No.12275 of 2006 whereby he declined the appellant's prayer for quashing order dated 26-5-2006 passed by Revenue Divisional Officer, Peddapuram (respondent No.1) for appointment of respondent No.3 – P. Narayana Murthy as fair price shop dealer of Shop No.25, K.E. Chinnayapalem Village of Kotananduru Mandal, East Godavari District.

Respondent No.3 was appointed as permanent fair price shop dealer prior to 2001. On 23-8-2001, a case was registered against him under Section 6-A of the Essential Commodities Act, 1955 (for short, 'the Act') and the tractor in which he was transporting rice to the students' hostel was seized. After issuing notice to respondent No.3 and considering his explanation, Joint Collector, East Godavari District, Kakinada passed order dated 11-4-2002 whereby he confiscated 100% of the seized stock and imposed fine in lieu of confiscation of tractor.

During the pendency of the appeal preferred by respondent No.3, which was registered as Criminal Appeal No.155 of 2002, respondent No.2 issued proceedings dated 1-7-2002 for appointment of the appellant as temporary fair price shop dealer of the shop in question. In the year 2004, ACP of Rajahmundry inspected the fair price shop. He found that the appellant had committed several irregularities. Thereupon, a case under Section 6-A of the Act was registered. The Joint Collector suspended the authorization of the appellant. This was followed by show cause notice dated 19-3-2004. After considering the explanation of the appellant, the competent authority passed order dated 12-5-2004 for reinstatement of the appellant. Another case under Section 6-A of the Act was registered against the appellant by Mandal Revenue Officer, Kotananduru on 24-10-2005 and her authorization was suspended by respondent No.1 vide his order dated 29-10-2005.

The criminal appeal preferred by respondent No.3 was allowed by Principal Sessions Judge, East Godavari at Rajahmundry vide his judgment dated 13-2-2006. The learned Sessions Judge altogether discarded the reasons assigned by the Joint Collector and held that

respondent No.3 had been made victim of village politics. This is evinced from paragraph 5 of the judgment, which is extracted below:

“5. The appellant’s son was transporting ten quintals of mid-day meal rice in their own tractor bearing No.AND 6145 at 5-00 A.M. on 23-8-2001. The grounds on which the Joint Collector came to adverse conclusion against the appellant are that the school will be opened at 9-00 A.M. and that the Headmaster of K.E. Chinnaiahpalem was on leave on that day and the appellant was not asked to supply mid-day meal rice on that day. It is not as if either the Headmaster or B.Ed. Assistant informed the dealer about the Headmaster being on leave on that day. It is not as if the dealer is expected to keep mid-day meal rice with him until and unless the Headmaster asks for their supply. There is no prohibition for sending mid-day meal rice to the school as and when the stock is received by the dealer. Even though it was early hours of the day, the rice was not handed over to any third party and was not sent in any public carrier. Rice was sent in the appellant’s own vehicle with the supervision of the appellant’s son. Custody of the rice remained with the appellant only when the villagers stopped the tractor and detained the same in a flourmill. It is evident that due to village politics, the villagers have unnecessarily detained the tractor and saw that case was booked against the appellant. I do not find any violation made by the appellant of any Control Orders in this case. I find that the order passed by the Joint Collector is neither legal nor proper nor just.”

Soon after the judgment of the criminal appeal preferred by him, respondent No.3 submitted an application for restoration of his appointment as fair price shop dealer. Respondent No.1 considered the plea of respondent No.3, in the backdrop of the judgment of Criminal Appeal No.155 of 2002, the fact that during the interregnum, the appellant had been appointed as temporary fair price shop dealer, as also the fact that her authorization was suspended on two occasions and proceedings under Section 6-A were initiated, and

passed order dated 29-5-2006 for appointment of respondent No.3 as fair price shop dealer. The appellant challenged that order in Writ Petition No.12275 of 2006 by contending that respondent No.1 did not have the power, jurisdiction or authority to reinstate respondent No.3 because the latter had not challenged order dated 11-4-2002 passed by the Joint Collector under Section 6-A of the Act. She further pleaded that her temporary authorization had been regularised in the year 2004 and, therefore, respondent No.1 could not have indirectly cancelled the same.

In the counter-affidavit filed by him, Shri K.Prabhakar Rao, Revenue Divisional Officer, Peddapuram controverted the appellant's assertion that her temporary authorization had been regularised in 2004. According to Shri K. Prabhakar Rao, revocation of the suspension of the appellant's authorization cannot be equated with regularisation. He then averred that the writ petitioner (appellant herein) had committed several irregularities and her authorization was suspended on two occasions. He further averred that authorization of respondent No.3 was restored because the order of confiscation passed against him was set aside by Principal District and Sessions Judge.

In a separate affidavit filed by him, respondent No.3 also referred to the cases booked against the petitioner (appellant herein) and pleaded that she does not have the right to continue as fair price shop dealer.

The learned Single Judge referred to the provisions of Section 6-C of the Act, Clause 5 (4) of the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short, 'the Control Order') and held that re-appointment of respondent No.3 cannot be termed as illegal because his conviction was set aside by Principal

District and Sessions Judge, East Godavari. The learned Single Judge further held that non-filing of appeal by respondent No.3 against the order of cancellation of authorization was irrelevant.

Shri V.V.N. Narayana Rao, learned counsel for the appellant argued that the decision of the learned Single Judge is based on a total misinterpretation of Clause 5 (4) of the Control Order and Section 6-A of the Act and, therefore, the impugned order is liable to be set aside. Shri Rao emphasized that the conviction envisaged in Clause 5 (4) of the Control Order has nothing to do with Section 6-A of the Act under which the competent authority can order confiscation of the essential commodity. Learned counsel then referred to Section 7 of the Act to show that a person who contravenes any order made under Section 3 can be punished with an imprisonment for a term up to one year and imposition of fine and submitted that the appeal filed by respondent No.3 against the order passed under Section 6-A cannot be treated as an appeal against conviction.

We have given serious thought to the arguments of the learned counsel and are inclined to agree with him that the order of the learned Single Judge is based on an apparently erroneous interpretation of Clause 5 (4) of the Control Order, which envisages cancellation of authorization of fair price shop dealership in the event of conviction of the dealer on account of contravention of any order made under Section 3 of the Act, and proviso thereto envisage re-issue of authorization after the conviction is set aside. On the face of it, this clause has nothing to do with an order of confiscation passed under Section 6-A of the Act. Therefore, tenability of the reasons assigned by the learned Single Judge for sustaining order dated 29-5-2006 passed by respondent No.1 is questionable.

In view of the above, we may have set aside the order of the

learned Single Judge and remanded the case for fresh adjudication of the writ petition, but do not consider it proper to do so because, it is an undisputed position that the tenure of temporary authorization of the appellant ended on 31-3-2006 and no further extension was granted by the competent authority. In our opinion, once the term of the temporary authorization of the appellant to act as fair price shop dealer has come to an end, she cannot claim to continue to operate the shop. It is not even the pleaded case of the appellant that she had applied for renewal of her authorization or appointment as fair price shop dealer after 1-4-2006 and her application was rejected on the ground of re-appointment of respondent No.3 as fair price shop dealer.

We are further of the view that the order passed by respondent No.1 for re-appointment of respondent No.3 as fair price shop dealer does not suffer from any jurisdictional or legal infirmity warranting interference under Article 226 of the Constitution read with Clause 15 of the Letters Patent. Undisputedly, the authorization of respondent No.3 was cancelled because vide order dated 11-4-2002, the Joint Collector had ordered confiscation of the essential commodities i.e. rice and imposed fine in lieu of confiscation of tractor. By virtue of the judgment rendered by the Principal Sessions Judge, East Godavari in Criminal Appeal No.155 of 2002, the substratum of the action taken by the Joint Collector will be deemed to have disappeared. Therefore, respondent No.3 became entitled to re-appointment as fair price shop dealer. The competent authority could have denied re-appointing respondent No.3 only if dealership of the fair price shop in question had been permanently granted to third person. However, the fact of the matter is that no other person had been granted permanent authorization of the fair price shop dealership of the shop

in question. The appellant was granted temporary authorization, the term of which ended on

31-3-2006. Therefore, there was no clog on the right of respondent No.3 to seek re-appointment as fair price shop dealer and respondent No.1 did not commit any illegality by passing order dated 29-5-2006.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP SR Nos.104835 and 104836 of 2006 filed by the appellant for interim reliefs is also dismissed.

**G.S. SINGHVI, CJ**

**C.V. NAGARJUNA REDDY, J**

November 03, 2006

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